

BILL NO. 46 -2009

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS REQUIRED TO EFFECTUATE THE TRANSFER OF OWNERSHIP OF PREMISES KNOWN AS 501 S. 5TH STREET, READING, BERKS COUNTY, PA FROM THE LIBERTY STEAM FIRE COMPANY TO THE CITY OF READING.

WHEREAS, the City of Reading is interested in acquiring ownership of property known as 501 S. 5th Street, Reading, Berks County, Pennsylvania (Mapped PIN #530643779326); and

WHEREAS, the owner of said property is the Liberty Steam Fire Company, which is willing to convey said premises for a sum certain of \$1.00; and

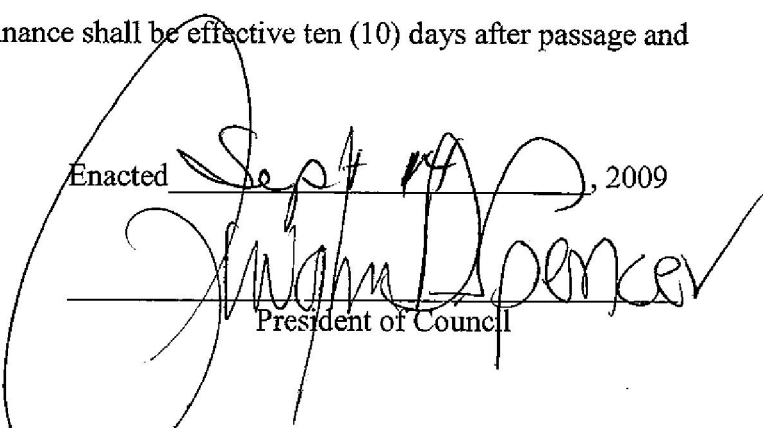
WHEREAS, the City of Reading finds that acquisition of subject premises pursuant to said condition is acceptable.

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

1. **SECTION 1.** The Mayor is authorized to execute any and all documents, including the Sales Agreement (attached as Exhibit A), required to effectuate the transfer of the ownership of premises known as 501 S. 5th Street, Reading, Berks County, Pennsylvania, from the Liberty Steam Fire Company, to the City of Reading for the purchase price of \$1.00.

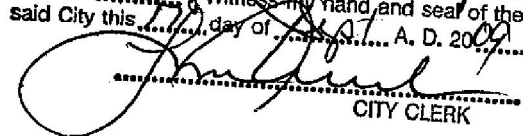
SECTION 2. This Ordinance shall be effective ten (10) days after passage and approval by the Mayor.

Enacted Sept 14, 2009


President of Council

Attest:


City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 14th day of Sept, A. D. 2009. Witness my hand and seal of the said City this 17th day of Sept, A. D. 2009.

CITY CLERK

Submitted to Mayor: PL
Date: 9-15-09

Received by the Mayor's Office: BR
Date: 9/16/09

Approved by Mayor: BR
Date: 9/16/09

Vetoed by Mayor: _____
Date: _____

“EXHIBIT A”

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the “Agreement”) made this _____ day of _____, 2009, by and among the Liberty Steam Fire Company with an address at 501 S. 5th Street, City of Reading, (the “Seller”), and CITY OF READING, a municipal corporation, or its assignee or nominee (the “Buyer”), with an address at 815 Washington Street, Reading, Pennsylvania.

BACKGROUND

A. LIBERTY STEAM FIRE COMPANY owns said property known as 501 S. 5th Street, Reading, Berks County, Pennsylvania, as more particularly described in Exhibit “A” attached hereto and made a part hereof, together with all buildings, improvements and fixtures located thereon (collectively referred to as the “Property”).

B. Buyer desires to (i) acquire said property and (ii) maintain the building as a fire museum, through its tenant, the Reading Area Firefighters Museum, Incorporated.

C. Seller desires to sell and transfer to Buyer, and Buyer desires to purchase and accept from Seller, the Property.

AGREEMENT

IN CONSIDERATION of the mutual promises contained herein, and intending to be legally bound hereby, Seller and Buyer agree as follows:

1. **Agreement to Sell and Purchase.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property, upon the terms and conditions contained herein. This agreement includes part of the adjoining properties

owned by Liberty Steam Fire Company at 503 and 505 S. 5th Street¹. The dwellings of 510 and 512 will remain the property of the Liberty Steam Fire Company.

2. **Purchase Price.** The purchase price shall be One Dollar (\$1.00).
3. **Payment of Purchase Price.** The Purchase Price shall be payable by Buyer upon delivery of the deeds at the Closing (as hereinafter defined).
4. **Conveyance and Title.** Conveyance shall be by special warranty deed to Buyer. Title shall be a good and marketable fee simple title, free and clear of liens and encumbrances, and shall be insurable as such at regular rates by a title insurance company maintaining an office in Reading, Pennsylvania.
5. **Defects in Title.** In the event that a good and marketable title, as provided in the previous Paragraph, cannot be given by Sellers to Buyer, Buyer may accept the title without insurance or subject to exceptions or Buyer may, by written notice to Sellers, terminate this Agreement, in which event Sellers and Buyer shall be released from all liability hereunder, and this Agreement shall be null and void.
6. **Existing Tenancies and Maintenance.** Buyer is purchasing the Property subject to the existing tenancies. Buyer agrees to maintain the building as a fire museum, through its tenant, the Reading Area Firefighters Museum, Inc. All collectibles in the museum that are the property of Seller will be inventoried and will remain the property of Seller with the agreement that they will remain on display in the museum for as long as Buyer maintains the museum. If the Buyer decides in the future not to maintain the museum, Seller shall have first buy back rights to the property for One Dollar (\$1.00), in as good, or better condition, as was originally conveyed to Buyer. Should Seller not wish to accept said property, Buyer must offer said property to the Reading Area Firefighters Museum, Inc. for One Dollar (\$1.00). If neither Seller nor the Reading Area Firefighters Museum choose to accept said property, Buyer shall list the property for sale for marketable value.
7. **Use of Building.** Seller shall be allowed to conduct its monthly meetings in the historic second floor meeting room until the completion of the new Southwest Fire Station. The use of any other parts of the building by the company for any other purposes shall be with the permission of Buyer and its tenant, the Reading Area Firefighters Museum, Inc, except as noted below.

Buyer agrees to lease the easternmost one-story garage, along Laurel Street, and its rear rooms to the Reading Fire Department Volunteer Scuba Team for the sum of One Dollar (\$1.00) per year to store its vehicles and conduct its operations. The team shall have no access to the rest of the building except by permission of Buyer. (The "Crewman's Room" at the rear of the garage area will continue to be used by the paid

¹ The Liberty Steam Fire Company will prepare and file a revised Deed which accurately depicts the division of the lots known as under 501, 503 and 505 S. 5th Street.

firefighters employed by the City until the completion of the new Southwest Fire Station.)

8. **Expenses.** The costs and expenses of sale and conveyance shall be borne by the parties as follows:

- (a) Seller shall pay for the preparation and acknowledgement of the Deeds.
- (b) All other expenses of conveyance shall be paid by the party incurring them.

9. **Closing.** Closing under this Agreement (the "Closing") shall be made by Seller and Buyer within three (3) months from the date of this Agreement or on such earlier date as Buyer shall, by ten (10) days' prior written notice to Seller, specify as the Closing Date. The date on which Closing occurs is herein referred to as the "Closing Date."

10. **Deeds and Possession of Property.** Seller shall deliver to Buyer the deed and possession of the Property on the Closing Date. Formal tender of the deeds is hereby waived.

11. **Due Diligence.**

- (a) Buyer specifically acknowledges that Seller is selling and Buyer is purchasing the Property on an "as is, with all faults" basis and that Buyer will have an opportunity to inspect the property and is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, its agents, or representatives as to any matters concerning the property, including without limitation:
 - (i) the quality, nature, adequacy and physical condition of the Property, including, but not limited to, the structural elements, foundations, roofs, floors, appurtenances, access, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances;
 - (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater;
 - (iii) the existence, quality, nature and adequacy of any utilities available to the Property;

- (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value, or adequacy for any particular purpose;
- (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property;
- (vi) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity;
- (vii) the quality of any labor and materials used in any improvements on the Property;
- (viii) the condition of title to the Property; and
- (ix) the economics of the operation of the Property.

12. **Environmental Matters.**

Buyer acknowledges that Seller makes no representation or warranty, express or implied, that the Property is free from hazardous or toxic substances, materials or wastes which are or become regulated by any federal, state or local governmental authority or that the Property is in compliance with any federal, state or local environmental laws or regulations. This disclaimer set forth herein shall not be affected or limited by any investigation conducted by or on behalf of the Seller, or the delivery by Seller to Buyer of copies of any reports discussing the results of any investigation or environmental conditions of the Property. Seller has not conducted any independent investigation or verification of the contents of such reports, and makes no representations or warranty regarding the accuracy or completeness of the information contained therein.

(a) In the event that Buyer elects to proceed to Closing under this Agreement, Buyer shall fully and forever release, and waive any claims Buyer may have against Seller and Seller's parents, subsidiaries, affiliates, officers, directors, employees and counsel with respect to and from any and all losses, claims, demands, actions, causes of action, obligations, expenses, attorneys' fees, damages (including claims for punitive damages) or liabilities arising from, resulting from, relating to, or in any way associated with any environmental condition of the Property ("Environmental Costs"). Buyer agrees to undertake any and all environmental remediation work that is required under state and/or federal

Environmental Laws ("Remedial Obligations"). For the period of time commencing on the Closing Date and ending after the completion and acceptance by all applicable state and/or federal agencies of the performance of all Remedial Obligations on, at or under the Property, Buyer shall indemnify, defend and save Seller harmless from and against any and all Environmental Costs.

(b) For the purposes of this Agreement:

(i) "Hazardous Substances" mean any petroleum product and any chemicals, materials, or substances at any time defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "biohazardous waste," "pollutant," "toxic pollutant," "contaminant," "infectious waste," "toxic substances," or any other term or expression intended to define, list or classify substances by reason of properties harmful to human health or the environment under any applicable Environmental Laws. Hazardous Substances shall also include friable asbestos and/or friable asbestos containing materials and polychlorinated biphenyls.

(ii) "Environmental Laws" shall mean all common law causes of action relating to environmental conditions and any federal, state, or local law, statute, ordinance, administrative rule or regulation now in effect or hereinafter enacted, pertaining to human health, industrial hygiene or the regulation or protection of the environment, including, without limitation, the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 1995-2, 35 P.S. § 6026.101 et seq. ("Act 2"); the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, as amended, 35 P.S. § 6020.101 et seq. ("HSCA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (CERCLA); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended, 35 P.S. § 6018.101 et seq. ("Solid Waste Act"); the Clean Stream Laws, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq. ("Clean Streams Law"); the Storage Tank and Spill Prevention Act, Act of July 6, 1989, P.L. 169, as amended, 35 P.S. § 6021.101 et seq. ("Storage Tank Act"); the Clean Air Act of 1970, as amended, 42 U.S.C. § 7401 et seq. ("Clean Air Act"); the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 et seq. ("Clean Water Act"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq. ("RCRA"); the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq. ("TSCA"); and the rules and regulations promulgated thereunder.

(c) The provisions of this Section shall survive Closing and delivery of the deed.

13. **Seller's Representations or Warranties.** It is hereby understood between the parties hereto that:

- (a) the Property is being purchased "AS IS" and not as a result of any representations made by the Seller; and
- (b) Seller has not received any notice of any condemnation proceeding or other proceedings in the nature of eminent domain with respect to the Property.
- (c) Seller has delivered to Buyer copies of all notices received by Seller from any constituted governmental authority concerning the Property.
- (d) There is no proceeding pending for the increase or decrease of the assessed valuation of all or any portion of the Property.
- (e) Seller has no knowledge regarding the environmental condition of the Property.
- (f) Execution of all documents relating to this purchase transaction and the full and complete performance of the provisions hereof will not violate or result in any breach of, or constitute a default under any agreement, indenture, mortgage, deed of trust, bank, loan or credit agreement or other instrument to which Seller is a party or by which Seller is bound. Seller is not in default under any note, evidence of indebtedness, lease, contract, license, undertaking or other agreement where the liability thereunder might adversely affect such Seller's ability to perform its obligations under this Agreement.
- (g) There are no agreements with governmental authorities, agencies, utilities or quasi-governmental entities which affect the Property except those which are included in the preliminary title report and those matters which would be disclosed by a current survey of the Property.

14. **Buyer's Representations and Warranties.** To induce Seller to enter into this Agreement and to complete the Closing, Buyer makes the following representations and warranties to Seller, which representations and warranties are true and correct as of the date of this Agreement and shall be true

and correct at and as of the Closing Date in all respects as though they were made both at and as of the date of this Agreement and at and as of the Closing Date, and which representations and warranties shall survive the Closing:

- (a) Buyer is a political subdivision, which is duly organized, validly existing, and in good standing under Pennsylvania law.
- (b) Buyer has the legal right, power and authority to enter into this Agreement and perform all of its obligations hereunder.
- (c) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, and will not conflict with, or result in a breach of, any of the terms, conditions and provisions of the Charter of the City of Reading, and will not conflict with, or result in a breach of, any law or regulation, order, judgment, writ, injunction or decree of any court or governmental instrumentality, or any agreement or instrument to which Buyer is a party, or by which Buyer is bound, or to which Seller or any portion of Buyer's property is subject.
- (d) This Agreement constitutes, and the documents to be delivered by Buyer pursuant to this Agreement will constitute, valid, legal, and binding obligations of Buyer, enforceable in accordance with their respective terms, covenants and conditions. There are no claims, defenses, or offsets to the validity of or enforceability against Buyer of this Agreement and the documents to be delivered pursuant hereto.

15. **Risk of Loss.** Any loss or damage to the Property by fire, storm, burglary, vandalism, malicious mischief, or other casualty between the date of this Agreement and the time of Closing shall void this Agreement.

16. **Default by Buyer; Remedies of Seller.** In the event that Buyer fails to comply with any or all obligations or agreements to be performed, honored or observed by Buyer under and pursuant to the terms and provisions of this Agreement, and such default is not cured within thirty (30) days after written notice to Buyer, the Seller may bring action for specific performance or Seller may terminate this Agreement. Seller shall be entitled to recover from Buyer all of Seller's out-of-pocket costs and expenses incurred from the date of this Agreement and any and all attorneys' fees and costs incurred by Seller as a result of such default:

17. **Default by Seller; Remedies of Buyer.** In the event that Seller fails to comply with any and all of the obligations or agreements to be performed, honored or observed by Seller under and pursuant to the terms and provisions of this Agreement, and such default is not cured within thirty (30) days after written notice to Seller, the Buyer may bring action for specific performance of Buyer or Buyer may terminate this Agreement. Buyer shall also be entitled to recover from Seller all of the Buyer's out-of-pocket costs and expenses incurred from the date of this Agreement and any and all attorneys' fees and costs incurred by Buyer as a result of such default.

18. **Third Party Brokerage.** Seller and Buyer hereby represent and warrant to each other that neither Seller nor Buyer have dealt with any broker or finder in connection with the transaction which is the subject of this Agreement, and each party hereby agrees to indemnify, save harmless and defend the other from and against all claims, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of any claim made by any broker, finder or other intermediary who claims to have dealt with such party in connection with the transaction which is the subject of this Agreement. The provisions of this paragraph shall survive settlement thereunder.

19. **Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the addresses set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this paragraph. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested. Notices shall be deemed to be received on the date of actual receipt, in the case of personal delivery, or on the date of mailing, in the case of mailing. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to the Seller:

Liberty Steam Fire Company
501 S. 5th Street
Reading, Pennsylvania 19602
Attn: William I. Stoudt, Jr.

Telephone No: 610-376-1928
Facsimile No.: N/A
Email Address: N/A

If to the Buyer:

City of Reading
815 Washington Street
Reading, Pennsylvania 19602
Attn: **William H. Rehr**
Fire & Rescue Services
Telephone No.: 610-655-6137
Facsimile No.: 610-655-6395
Email Address:
William.rehr@readingpa.org

City of Reading
815 Washington Street
Reading, Pennsylvania 19601-3690
Attn: Charles D. Younger, Esquire
Law Department
Telephone No.: 610-655-6208
Facsimile No.: 610-655-6427
Email Address: Solicitor@readingpa.org

20. **Time of Essence.** It is agreed by the parties that time shall be of the essence of all provisions of this Agreement, unless extended by mutual consent in writing.

21. **Entire Agreement.** This Agreement constitutes the entire contract between the parties hereto, and there are no other understandings, representations or warranties, oral or written, relating to the subject matter hereof which are not set forth herein.

22. **Assignment; Binding Effect.** This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective successors and permitted assigns.

23. **Amendment.** This Agreement may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.

24. **Meaning of Terms.** Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. Any reference to Sellers shall include a reference to each Seller.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be duly executed the day and year first above written.

SELLER:

LIBERTY STEAM FIRE COMPANY

By: LIBERTY STEAM FIRE

COMPANY

By: _____

President

Attest: _____
Secretary

BUYER:

By: _____
Mayor

Attest: _____
City Clerk

EXHIBIT

"A" - Legal Description of 501 S. 5th Street, Reading, PA

Exhibit "A"

Legal Description

All that certain lot or piece of ground being known as 501 S. 5th Street (Liberty Fire Company) located at the southeast corner of S. 5th and Laurel Streets in the City of Reading. Bounded on the North by Laurel Street; on the East by known address of 510 Laurel Street; on the West by 5th Street and on the South by known address of 503 S. 5th Street.